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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,378	07/30/2003	Gianfranco D'Amato	GKS 397	8950
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FLYNN THIEL BOUTELL & TANIS, P.C. 2026 RAMBLING ROAD KALAMAZOO, MI 49008-1631			GROSSO, HARRY A	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/630,378

Applicant(s)

D'AMATO, GIANFRANCO

Examiner

Harry A. Grosso

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10,12-20,22-27 and 29-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10,12-20,22-27 and 29-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Drawings

1. The amendment filed November 3, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: New Figure 4 illustrates a window of specific size, shape and location, and a hologram of specific size and location. These are not supported by the original disclosure or original figures and is considered new matter.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,2, 4-10, 12-20, 22-27, 29-31, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 56-156777 in view of McLaughlin (6,210,776) and Summons et al (4,863,014).

4. Regarding claim 1 and 5, as disclosed by applicant in the specification of the instant invention and in Figure 4, JP 56-156777 teaches a collapsible container with the overlap and the bent opening edge but does not teach the at least two layers of transparent fluid tight material. McLaughlin teaches a collapsible tube formed in a similar manner to JP '777 with at least three layers of fluid tight materials (plastic) and a

holographic decoration on an inner layer (14). The outer layer of McLaughlin is inherently transparent since the decoration is on the inner layer (14 Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the multi-layer material of McLaughlin, including an inner layer with an image or decoration, to provide a container that is fluid tight and provides a longer shelf life due to the barrier properties of the laminate of McLaughlin.

JP '777 and McLaughlin do not teach the at least two transparent layers. Summons et al teaches a collapsible tube that is constructed of multiple layers of plastic material, including a gastight layer, with indicia on one of the layers and all of the layers being transparent in at least some portion of the tube to allow for observation of the contents and the amount of material in the container. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the multi-layers of the combination of JP '77 and McLaughlin transparent and include a gastight barrier layer as taught by Summons et al to provide a container that is gastight with the capability to inspect the contents and determine the quality and amount of the contents in the container.

5. Regarding claim 2, the blank of JP '777 is two dimensional (Figure 1) and the container of JP' 777 as modified by McLaughlin and Summons et al would allow filling of the container to be monitored.

6. Regarding claim 4, the junction of JP '777 satisfies the claim limitation of the "perfect permanent junction." McLaughlin discloses a similar junction (Figure 3, column 3, lines 47-49).

7. Regarding claim 6, the layers are elastic and ductile to allow forming of the container and are dimensionally stable after shaping in that the tube will retain its shape after shaping of the container.
8. Regarding claim 7, the layers are liquid tight and gastight as discussed in claim 1 above.
9. Regarding claim 8 and 9, the layers of McLaughlin overlap and are fluid tight (Figure 4, column 1, lines 23-43).
10. Regarding claim 10 and 17, McLaughlin discloses a print on one of the layers.
11. Regarding claims 12-14, 16 and 18, McLaughlin discloses a laminate with specific layers of the material (Figures 1 and 2 and column 3, lines 18-57). 14 is the central layer and is the same material as applicants. The outer layer is 12 and the inner layer is 22, both of which are the same as the applicants.
12. Regarding claim 15, Summons et al discloses that it is known in the art to use ultrasonic welding for sealing of plastic layers together. It would have been obvious to use layers of material that are ultrasonic absorbent to allow the use of a technique that is known in the art (column 4, lines 55-65).
13. Regarding claims 19 and 20, JP '777 and McLaughlin disclose a closed end formed by connecting lower end sections. The process step of pressing one to another before they are connected does not require any structure that is not in the combination of references.
14. Regarding claim 22, the container is a cup and is circular in cross-section as seen in JP '777, Figure 4.

15. Regarding claims 23-25, the printing is a hologram and is capable of behaving exactly like that of applicant. The container is transparent as discussed in claim 1, thus the undecorated areas are the control window.

16. Regarding claim 26, the intended use does not require any structure not in the references. The claimed invention is disclosed except for the nature of the print. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the print in such a way that is only visible after part of the contents is removed since it has been held that optimization of a results effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Making the print only visible after part of the contents is removed is a results effective variable.

17. Regarding claim 27, see Figures 4 and 5 of JP '777 where the angle is bent at least 90 degrees.

18. Regarding claim 29, since the materials of modified container JP '777 are the same as that of applicant the modified container of JP '777 will perform the claimed function.

19. Regarding claim 30, the modified container of JP '777 is tapered and capable of stacking.

20. Regarding claim 31, the materials of the modified container of JP '777 are that of applicant. See McLaughlin where the materials of layers 12-14 and 22 are that of applicant.

21. Regarding claim 33, see Figure 1 of JP '777 where the container begins as a blank.

22. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP '777 in view of McLaughlin and Summons et al as applied to claim 1 and further in view of Halligan et al (4,574,987). The container of the invention is disclosed except for the air space in or between the layers. Halligan et al discloses an air space between layers of a similar container to provide an insulating layer (10, Figures 2 and 3, column 2, lines 1-9, column 3, lines 42-44). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an air space between layers as disclosed by Halligan et al in the modified container of JP '777 to provide an insulating layer and make the container more suitable for frozen products as taught by Halligan et al.

23. Claim 34 rejected under 35 U.S.C. 103(a) as being unpatentable over JP '777 in view of McLaughlin, Summons et al and Beall (4,324,338). JP '777 as modified by McLaughlin and Summons et al discloses all of the claimed structure, as discussed above, except the lid with a lid handle projecting outwardly from an edge of the lid. JP' 777 discloses the lid (6, Figure 5) but not the lid handle. The modified container of JP'777 is conical-shaped. Beall discloses a similar lid on a container (44, Figure 5) with a handle (46) that projects outward from as edge of the lid and beyond the edge of the container. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a lid with a handle as disclosed by

Beall in the modified container of JP '777 to provide a lid with a handle to facilitate easier removal of the lid.

24. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP '777 in view of McLaughlin, Summons et al and Beall as applied to claim 34 and further in view of Halligan et al (4,574,987). The container of the invention is disclosed except for the air space in or between the layers. Halligan et al discloses an air layer between layers of a similar container to provide an insulating layer (10, Figures 2 and 3, column 2, lines 1-9, column 3, lines 42-44). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an air space between layers as disclosed by Halligan et al in the modified container of JP '777 to provide an insulating layer and make the container more suitable for frozen products as taught by Halligan et al.

Response to Arguments

25. Applicant's arguments filed November 3, 2005 have been fully considered but they are not persuasive. Applicant argues that none of the references teaches a transparent container.

26. Applicant argues that JP' 777 and McLaughlin do not provide control window in the wall of the container.

27. Applicant argues that JP' 777 and McLaughlin do not provide a print that is only visible after at least a part of the food is removed.

28. In response, these issues have been addressed in the above action.

29. Applicant argues that McLaughlin is not capable of being stacked. In response, this feature is present in JP '777 and McLaughlin is not depended upon to teach this feature.

30. Applicant argues that Halligan does not disclose the same container as JP '777 or the instant invention. In response Halligan is relied upon to teach the concept of an air insulating layer between two layers of a container, the rest of the structure being provided by the other references.

31. Applicant argues that the container of McLaughlin is not dimensionally stable in that it will not return to essentially its original shape when the force is removed. In response the container of JP '777 is a collapsible container that is dimensionally stable and JP '777 as modified would be capable of acting in the way required by the limitation. The nature of the response and return would depend on the product in the container and the amount of force applied. The term "essentially" is a broad term allowing some variation, thus, the modified container of JP '777 would have this capability.

32. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both JP '777 and

McLaughlin are tube type containers useable with food (See column 1, lines 32-35 of McLaughlin). JP ' 777 is a laminate of stiff paper with polyethylene on both sides.

McLaughlin is a laminate with polyethylene inner and outer layers and a polyester center layer. McLaughlin is used to teach the use of the multi-layer all plastic material.

One of ordinary skill in the art would have been knowledgeable in the use of multi-layer plastic laminates for tube type containers used for food products.

33. Applicant's arguments with respect to Yoshida have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

34. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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Art Unit 3727

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